

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: ) Case No. 19-52510-amk  
 )  
 ) JUDGE ALAN M. KOSCHIK  
2265 ENTERPRISE EAST, LLC, )  
 )  
Debtor. ) JAMES P. BREEN'S OBJECTION TO  
 ) MOTION TO DISMISS/FOR RELIEF  
 ) FROM STAY

Now comes James P. Breen and hereby opposes Creditor Keystone Real Estate Lending Fund, L.P.'s Motion to Dismiss and Alternative Motion for Relief from Stay (Dkt. No. 24). In support of its Motion to Dismiss or for Relief from Stay, Creditor Keystone Real Estate Lending Fund, L.P. ("Creditor") urges that the instant petition constitutes bad faith, in part, based on the Debtor's inability to defend against foreclosure in Summit County Common Pleas Court Case No. CV-2018-11-4911 ("State Court Action"). Yet, no adverse ruling has determined the State Court Action. On the contrary, Debtor has sound defenses in the State Court Action, which have been articulated to the Court as follows:

1. In late August 2018, 2265 Enterprise East, LLC ("Debtor") requested modification of its November 2017 \$1,224,000.00 loan ("Loan") from Creditor Keystone Real Estate Lending Fund, L.P. ("Creditor"), secured by the real property and rents of 2265 East Enterprise Parkway, Twinsburg, Ohio ("Property").
2. The Loan was interest only, \$8,476.20 per month, scheduled to mature on June 1, 2019, with an Option to Extend until December 1, 2019; James P. Breen personally guaranteed enforcement costs and certain nonrecourse Loan carve-outs.

3. In response to Debtor's request, Creditor sent Debtor documents including a Loan Modification Agreement, a Guarantor's Consent and Waiver and a First Amendment to Mortgage ("Loan Modification"), the purpose of the Loan Modification was to provide Debtor with breathing room by rolling delinquent interest payments into the principal.
4. Debtor executed the Loan Modification papers on October 11, 2018, without alteration, and delivered the documents to Creditor's counsel Raines Feldman LLP in Los Angeles, California by Federal Express overnight delivery.
5. Between October 2018 and November 30, 2018 (when the state court action was filed), the parties disagreed regarding the amount that would be rolled into the principal under the Loan Modification, i.e. Creditor's imposition of penalties including late fees (\$6,182.94 through November 2018) and default interest (\$238.00/day).
6. At all times between October 11, 2018 and November 30, 2018, Debtor believed the Loan Modification cured its default and offered to pay the sum of \$61,358.22 on November 17, 2018.
7. The outstanding balance due Creditor on November 17, 2018 was \$49,448.61, including late fees and default interest.
8. Creditor failed to compromise with Debtor over \$25,000 in late fees and default interest in October 2018 and now seeks approximately \$180,000 in default interest (\$89,671.60 through December 5, 2019), late fees (\$57,263.78), and enforcement costs (\$32,473.28).
9. In refusing to accept the Debtor's offer to pay \$61,358.22 and filing for foreclosure relief on November 30, 2018, Creditor failed to mitigate its damages.

10. In failing to honor the Loan Modification and denying receiving the Loan Modification partially executed by Debtor, Creditor acted in bad faith and should be estopped from recovering excessive fees and default interest.
11. Creditor devalued the Property and eliminated its income stream when it antagonized the Property's sole tenant by rejecting terms customarily included in lease renewals, killing the deal, injuring debtor and further increasing its own damages.
12. The Property remains untenant and the Creditor has not expended funds for Property operations and maintenance, including utilities.
13. The undersigned entered the State Court Action post-discovery dispute, Debtor's two previous counsel's firms having dissolved and withdrawn from representation, and the undersigned engaged Debtor to produce discovery documents.

Respectfully submitted,

/s/Christina C. Tizzano  
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*Attorney for James P. Breen*

**CERTIFICATE OF SERVICE**

I hereby certify that an accurate and true copy of the foregoing Objection to Motion to Dismiss/for Relief from Stay was submitted to the court's electronic filing system this 5th day of December, 2019, and the will be served according to such system's electronic delivery.

Respectfully submitted,

/s/Christina C. Tizzano  
Christina C. Tizzano (0090138)

*Attorney for James P. Breen*